

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Petition for Declaratory Ruling )  
Regarding Correctional Institution )  
Payphones )

RM-8181

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

COMMENTS OF THE AMERITECH OPERATING COMPANIES

The Ameritech Operating Companies<sup>1</sup> submit these comments on the Petition for Declaratory Ruling filed by the Inmate Calling Services Providers Task Force ("ICSPTF") requesting the Commission to declare that specialized pay telephones used for inmate-only services are customer premises equipment ("CPE") and that certain features provided in connection with those telephones are "enhanced" within the meaning of the Commission's Computer II rulings. The Companies oppose the petition. The Companies' inmate-oriented pay telephone service is clearly in the category of regulated pay telephone service as articulated by the Commission in its "Tonka" decision.<sup>2</sup> Moreover, the additional functions performed by the Companies in connection with that service -- e.g., PIN screening and call timing -- are clearly "basic" or "adjunct to basic" functions as described by the Commission in the NATA Centrex Order.<sup>3</sup>

<sup>1</sup> The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

<sup>2</sup> In the Matter of Petition for Declaratory Ruling of Tonka Tools, Inc., Memorandum Opinion and Order, FCC 85-269 (released May 22, 1985) ("Tonka Order").

<sup>3</sup> In the Matter of North American Telecommunications Association Petition for Declaratory Ruling, ENF 84-2, Memorandum Opinion and Order, FCC 85-248, (released May 29, 1985) ("NATA Centrex Order").

I. INMATE PAYPHONES ARE NOT CPE.

The ICSPTF acknowledges that the Commission has already specifically refused to categorize BOC-provided pay telephones as CPE. In the Tonka Order, the Commission ruled that, regardless of whether the BOC pay telephones are coin or coinless, central office activated or "smart" sets, public or semi-public:

they have not changed in one important respect; the equipment and the transmission capacity are not logically severable. Pay telephones provided by carriers subject to regulation have historically been accorded special regulatory status because they serve the public service role of ensuring pay telephone service is available to the transient, mobile public, and they have as their primary customer or user the general public. Even if the telephone company describes the services as "semi-public" and collects a charge from a subscriber such as a bar or restaurant, the primary customer of this pay telephone equipment for Computer II regulatory purposes is still the general public or some segment thereof. As to these customers or users the telephone instrument and the end line are necessarily integrated. The user of these devices pays a single charge in order to place a call from a pay telephone in a public or semi-public location. The instrument and the pay telephone service are not severable from that customer's perspective. Although free to choose another location from which to place his call, the customer cannot separately select, combine or pay for the terminal device and the transmission line which are used to make the call. In this sense, the pay telephones and transmission capacity provided by AT&T and the BOCs are logically an integrated offering and these carriers should be permitted to provide them as an end-to-end service.<sup>4</sup> (Emphasis added.)

The Commission recognized BOC-provided pay telephone service for what it is -- a specially regulated public service offering with the general public, "or some segment thereof," as its customer. The service is logically integrated since, from the user's standpoint, the instrument is not severable from the service. The customer would have no practical ability or interest to choose among telephone sets to be used to make a call over a BOC pay telephone line.

The ICSPTF, however, attempts to distinguish the effect of the Commission's Tonka decision by claiming that it is inapplicable to an inmate

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<sup>4</sup> Tonka Order at ¶ 12.

situation since inmate phones are not provided for use by the general public. In fact, the ICSPTF efforts to distinguish the Tonka decision are misplaced. It is clear that, in its reference to "the transient, mobile public," the Commission was referring to those people with communications needs who were in situations in which it was impracticable for them to access their own telephone service – service to which they could associate their separately-procured CPE. Inmates are in exactly that situation. It is impracticable for inmates to subscribe to their own dedicated telephone service in their cells. It is equally impracticable for them to have their own CPE to "plug into" the public telecommunications network in the same manner as they might plug an electric razor into a wall socket. This makes them logical candidates for a service offered on a pay-per-call basis that combines the telephone instrument and the transmission service. While it is true that inmates are not extremely "transient" or "mobile," they are in fact no less so than a person caught in an airport between a change of planes that finds himself or herself in need of making a telephone call. In neither case is the caller in a position to regard the provision of the telephone instrument separately from the provision of the transmission service. Thus, while the inmate population does not constitute the totality of the general public within the meaning of the Tonka Order, it is still "some segment thereof." Thus, the Commission's decision in the Tonka case applies with full strength to the inmate payphone situation.

The ICSPTF attempts to create an additional distinction by analogizing inmate payphones to "telephones in hotels, hospitals, and universities." The more appropriate analogy is telephones in the common areas of those institutions. Just as BOCs are permitted to locate regulated payphones in the lobbies of hotels, hospitals, and universities so also are they permitted to locate them in the "common area" of correctional institutions.

Although the ICSPTF makes other arguments as to why BOC-provided inmate payphones should be considered CPE, they are all equally unpersuasive. First, the ICSPTF argues that the additional functionality associated with inmate payphones requires that they be considered CPE. In support, the ICSPTF cites to the Commission's decision in the IBM case<sup>5</sup> to the effect that associating a multiplexer with a competitive CPE functionality takes a customer premises multiplexer out of the category of permissible network equipment. Of course, that decision dealt with CPE functionality in the context of the Commission's decisions on network channel terminating equipment ("NCTE"). It has nothing to do with functions that actually restrict the use of BOC pay telephone service supplied in a correctional institution context. As the Tonka decision specifically noted, the regulated status of BOC-provided payphones is not dependent on the lack of intelligence in the sets themselves.<sup>6</sup>

Second, the ICSPTF argues that the interpositioning of equipment between the central office and the payphone itself militates in favor of characterizing the pay station as CPE. In the case of the Ameritech Operating Companies, the terminal and associated software used by the correctional facility to update the regulation of inmate use of the pay station is treated as deregulated equipment. However, it does nothing to alter the essential basic regulated nature of service being offered by the Companies to the inmate population.

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<sup>5</sup> 58 Rad. Reg. 2d 374 (1984).

<sup>6</sup> Tonka Order at ¶ 12.

## II. INMATE PAYPHONE SERVICES ARE "BASIC."

ICSPTF further claims generally that a number of aspects of inmate payphone service are enhanced and should be offered on an unregulated basis. However, it cites only two features in connection with this claim – a call recording capability mentioned by Pacific Bell in connection with an RFP response and PIN number screening.

First of all, the Ameritech Operating Companies would not provide a call recording capability on a regulated basis.

The second feature, however, is "basic." PIN number systems can be used by correctional institutions to, among other things, limit the amount each inmate may utilize the telephone – in order to minimize potential dissension that could result from certain inmates' monopolizing telephone time, and as a reward/penalty tool. While ICSPTF analogizes the feature to customer dialed account recording ("CDAR") -- a feature which the Commission found to be enhanced<sup>7</sup> -- the two are very different. CDAR permits the calling party to "tag" the record of that call with its own unique account number so that the cost of the call can later be associated with a particular client for pass-through billing purposes. That is clearly a customer use that does not have a direct association with the completion of the call itself. The PIN number system in question, however, is more akin to a security screening device. In other words, an inmate will not be permitted to use the payphone -- to complete a call -- unless his/her PIN number is "cleared." This is merely the mirror image of the call blocking feature that the Commission specifically found to be basic.<sup>8</sup> Both functions

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<sup>7</sup> NATA Centrex Order at ¶ 41.

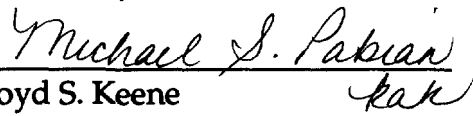
<sup>8</sup> *Id.* at ¶ 46.

specifically deal directly with call completion which takes them out of the category of enhanced services.

III. CONCLUSION.

Nothing in the ICSPTF's petition differentiates inmate payphone services in any aspect that is material to the Commission's Tonka determination that BOC-provided payphones should not be considered CPE. The Commission should view BOC-provided inmate calling services as the specific tailoring of a generalized payphone offering for situations peculiar to correctional facilities. Services are offered on a collect-only basis to minimize the occurrence of fraud. The use of a PIN number system which limits each inmate's use of the service simply provides the best means to administer inmates' calling privileges to preserve order in the correctional-facility context. In light of the foregoing, ICSPTF's petition should be denied.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I, Jenell Thompson, do hereby certify that a copy of the Comments of the Ameritech Operating Companies has been mailed this 8th day of March 1993, by first-class mail, postage prepaid, to the party listed below.

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